

**CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
PROPOSED REGULATORY LANGUAGE
Title 16, Division 39, California Code of Regulations
Sections 4100, 4101, 4146, 4148, 4149, and 4149.1**

Specific Language

Proposed amendments are shown by ~~strikeout~~ for deleted text and underlined for new text.

Amend Title 16, Division 39, California Code of Regulations to read as follows:

1. Section 4100 is amended to read as follows:

§ 4100. Definitions.

In addition to the definitions found in Business and Professions Code section 2570.2, the following terms are used and defined herein:

~~(a) "Certificate" means the authority granted by the board to a person to offer occupational therapy services as an occupational therapy assistant under the appropriate supervision of an occupational therapist.~~

~~(b)~~ (a) "Code" means the Business and Professions Code.

~~(c)~~ (b) "Holder" means the person to whom a license, ~~certificate~~ or limited permit has been issued by the board.

~~(d)~~ (c) "License" means the authority granted by the board to a person to offer occupational therapy services as an occupational therapist or an occupational therapy assistant.

~~(e)~~ (d) "Limited permit" means the authority granted by the board to a person to offer occupational therapy services under the direction and appropriate supervision of an licensed occupational therapist.

~~(f) "Incompetence" is the lack of possession of or the failure to exercise that degree of knowledge, learning, skill, ability, care or experience ordinarily possessed and exercised by a competent licensed professional.~~

~~(g) "Negligence" is a departure from the standard of care, which under similar circumstances, would have been ordinarily exercised by a competent licensed professional.~~

~~(h) "Gross negligence" is an extreme departure from the standard of care, which under similar circumstances, would have been ordinarily exercised by a competent licensed professional.~~

~~(i) For the purposes of denial, suspension, or revocation of a license, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of an occupational therapy practitioner, if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare. Such crimes or acts include but are not limited to those involving the following:~~

~~(1) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate any provision or term of the Occupational Therapy Practice Act.~~

~~(2) Fiscal dishonesty, theft or larceny.~~

~~(3) An incident involving controlled substances to the extent that practice is impaired or a threat to the health or safety of themselves or others~~

~~(4) Conviction of a crime involving harassment or stalking (as defined by the Penal Code).~~

~~(5) Conviction of a crime involving lewd conduct, prostitution or solicitation thereof, or pandering and/or indecent exposure (as defined by the Penal Code).~~

~~(6) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.~~

~~(7) Failure to comply with any mandatory reporting requirements.~~

~~(8) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.~~

~~(j)~~(e) "The Occupational Therapy Practice Act" or "Act" means Chapter 5.6 of Division 2, of the Business and Professions Code.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 2570, 2570.2 and 2570.5, Business and Professions Code.

2. Section 4101 is amended to read as follows:

§ 4101. Delegation of Certain Functions.

Except for those powers reserved exclusively to the "agency itself" under the Administrative Procedure Act (section 11500 et seq. of the Government Code), tThe power and discretion conferred by law upon the Board to order an examination pursuant to section 820 of the Code, receive and file accusations and statements of issues; issue notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing and perform other functions necessary to the dispatch of the business of the Board in connection with proceedings under the provisions of Sections 11500 through 11528 of the Government Code, prior to the hearing of such proceedings, including the authority to approve a settlement agreement for revocation or surrender of a license, adoption of default decisions, or approve an interim license suspension; and the certification and delivery or mailing of copies of decisions under Section 11518 of the Government Code are hereby delegated to and conferred upon the executive officer of the Board.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 480, 2570.1, 2570.6, 2570.17, 2570.19, 2570.20, and 2570.23, Business and Professions Code and Sections 11500 et.seq., and 11415.60, Government Code.

NOTE: Article 5.5 as referenced in numbers 3- 7 below, is being added as part of rulemaking file number Z-2010-0601-03.

3. Section 4146 is added to Article 5.5, Enforcement, to read as follows:

§ 4146. Definitions.

(a) "Incompetence" is the lack of possession of or the failure to exercise that degree of knowledge, learning, skill, ability, care or experience ordinarily possessed and exercised by a competent licensed professional.

(b) "Negligence" is a departure from the standard of care, which under similar circumstances, would have been ordinarily exercised by a competent licensed professional.

(c) "Gross negligence" is an extreme departure from the standard of care, which under similar circumstances, would have been ordinarily exercised by a competent licensed professional.

(d) For the purposes of denial, suspension, or revocation of a license, a crime or act shall be considered to be "substantially related to the qualifications, functions or duties of an

occupational therapy practitioner,” if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare. Such crimes or acts include but are not limited to those involving the following:

- (1) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate any provision or term of the Occupational Therapy Practice Act.
- (2) Fiscal dishonesty, theft or larceny.
- (3) An incident involving controlled substances to the extent that practice is impaired or a threat to the health or safety of themselves or others.
- (4) Conviction of a crime involving harassment or stalking (as defined by the Penal Code).
- (5) Conviction of a crime involving lewd conduct, prostitution or solicitation thereof, or pandering and/or indecent exposure (as defined by the Penal Code).
- (6) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.
- (7) Failure to comply with any mandatory reporting requirements.
- (8) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 2570, 2570.2 and 2570.5, Business and Professions Code.

4. Section 4148 is added to Article 5.5, Enforcement, to read as follows:

§ 4148. Mental or Physical Examination of Fitness for Licensure.

In addition to any other requirements for licensure, whenever it appears that an applicant for a license may be unable to practice occupational therapy safely because the applicant’s ability to practice may be impaired due to mental illness or physical illness affecting competency, the board may require the applicant to be examined by one or more physicians and surgeons or psychologists designated by the board. The board shall pay the full cost of such examination. An applicant’s failure to comply with the requirement shall render his or her application incomplete.

The report of the evaluation shall be made available to the applicant.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 2570.6 and 2570.26, Business and Professions Code.

5. Section 4149 is added to Article 5.5, Enforcement, to read as follows:

§ 4149. Other Actions Constituting Unprofessional Conduct.

In addition to the conduct described in Section 2570.28(a) and 2570.29 of the Code, “unprofessional conduct” also includes but is not limited to the following:

(a) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee’s practice, whether the agreement is made before or after the filing of an action:

- (1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.

(2) A provision that requires another party to the dispute to withdraw a complaint the party has filed with the board.

(b) Failure to provide to the board, as directed, lawfully requested certified copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the certified documents with this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

(c) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privilege. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(d) Failure to report to the board within 30 days any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) The arrest of the licensee.

(3) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(4) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(e) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 2570.28 and 2570.29, Business and Professions Code.

6. Section 4149.1 is added to Article 5.5, Enforcement, to read as follows:

§ 4149.1. Revocation for Sexual Contact.

Notwithstanding the disciplinary guidelines, any proposed decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any act of sexual contact, which is defined as sexual intercourse or the touching of an intimate part of a patient for the purpose of sexual arousal, gratification, or abuse, with a patient, or has committed an act or been convicted of a sex offense as defined in Section 44010 of the Education Code, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license.

Note: Authority cited: Section 2570.20 Business and Profession Code, and Section 11400.20, Government Code. Reference: Sections 475, 480, 481, 482, 490, 496, 2570.26, 2570.27, 2570.28, 2570.29, 2570.30, 2570.31, 2570.32, Business and Professions Code; Section 44010, Education Code; and Sections 11400.20 and 11425.50(e), Government Code.